

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(BOSTON DIVISION)**

GILBERTO PEREIRA BRITO,
FLORENTIN AVILA LUCAS, JACKY
CELICOURT,

Petitioners,

v.

MERRICK GARLAND, ATTORNEY
GENERAL, U.S. DEPARTMENT OF
JUSTICE., *ET AL.*,¹

Respondents.

Civil No. 1:19-cv-11314-PBS

**ASSENTED TO MOTION FOR 33-DAY EXTENSION OF DEADLINE
TO FILE PROPOSED FORM OF JUDGMENT**

Defendants Attorney General Merrick Garland, *et al.*, hereby move for a 33-day extension of their deadline to file a Proposed Form of Judgment from September 8, 2022 to October 11, 2022. As discussed below, this request is supported by good cause, and is made in good faith and not for the purpose of delay:

1. In this class action, on November 27, 2019, the Court, in sum, held and declared as follows:

First, the Board of Immigration Appeals (“BIA”) policy of placing the burden of proof on the alien at 8 U.S.C. § 1226(a) bond hearings violates due process and the APA. Second, due process requires the Government prove at § 1226(a) bond hearings an alien’s dangerousness by clear and convincing evidence or risk of flight by a preponderance of the evidence. Third, due process requires the immigration court to evaluate an alien’s ability to pay in setting bond, and consider alternative conditions of release, such as GPS monitoring, that reasonably assure the safety of the community and the alien’s future appearances. Fourth, the Government

¹ Attorney General Merrick Garland has been substituted for former Attorney General William P. Barr as respondent.

shall produce to class counsel certain information regarding each member of the Post-Hearing Class in order to facilitate individual habeas petitions challenging their continued detention.

Brito v. Barr, 415 F. Supp. 3d 258, 263 (D. Mass. 2019).

2. Petitioners and Respondents each appealed portions of the Court's order.
3. On December 28, 2021, a panel of the First Circuit Court of Appeals "affirm[ed] the district court's declaration that noncitizens 'detained pursuant to 8 U.S.C. § 1226(a) are entitled to receive a bond hearing at which the Government must prove the alien is either dangerous by clear and convincing evidence or a risk of flight by a preponderance of the evidence.'" *Brito v. Garland*, 22 F. 4th 240, 244 (1st Cir. 2021) (quoting *Brito v. Barr*, 415 F. Supp. 3d 258, 271 (D. Mass. 2019)). The panel vacated the remainder of the district court's declaratory judgment and its permanent injunction, and remanded for entry of judgment in accordance with its opinion. *Brito*, 22 F. 4th at 244. One member of the panel dissented in part from the majority opinion. *Id.* at 257 (Lipez, C.J., dissenting in part).
4. On June 1, 2022, Petitioners filed a petition for panel rehearing and/or rehearing en banc. The same day, Respondents filed a petition for rehearing en banc.
5. On July 6, 2022, the First Circuit denied both parties' petitions for rehearing and petitions for rehearing en banc (the court also treated Respondents' petition as a petition for rehearing before the original panel).
6. Currently, Respondents are still in the process of evaluating whether or not to file a petition for a writ of *certiorari*. For Respondents, the final decision to file a petition for a writ of *certiorari* must be made by the Office of the Solicitor General. *See* 28 C.F.R.

§ 0.20(b). Respondents have not yet made a final determination regarding further review of this matter.

7. A petition for a writ of *certiorari* is due on October 4, 2022, which is 90 days after the denial of rehearing. *See* Supreme Court R. 13(1) (*certiorari* petition is timely when it is filed within 90 days after entry of the judgment); 13(3) (“The time to file a petition for a writ of *certiorari* runs from the date of entry of the judgment or order sought to be reviewed...But if a petition for rehearing is timely filed in the lower court ..., the time to file the petition for a writ of *certiorari* for all parties ... runs from the date of the denial of rehearing...”).

8. Respondents request seven (7) days beyond the *certiorari* deadline within which to file the Proposed Form of Judgment.

9. Accordingly, Respondents request that the Court extend the time within which to file the Proposed Form of Judgment until October 11, 2022.

10. On September 6, 2022, counsel for Plaintiffs stated via email that they assent to the relief requested in this motion.

WHEREFORE, Respondents respectfully request that the Court grant this motion and extend the time to October 11, 2022.

Respectfully submitted,

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Principal Deputy Assistant Attorney General
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WILLIAM C. PEACHEY
Director
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/s/ Catherine M. Reno
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Counsel for Respondents

CERTIFICATE OF SERVICE

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I hereby certify that this document will be filed through the electronic filing system of the Court, which system will serve counsel for all parties.

Dated: September 7, 2022

/s/ Catherine M. Reno

By: CATHERINE M. RENO
Trial Attorney